STATEMENT OF CONSIDERATION RELATING TO
907 KAR 9:005

Department for Medicaid Services
Amended After Comments

(1) A public hearing regarding 907 KAR 9:005 was not requested and; therefore, not held.

(2) The following individuals submitted written comments regarding 907 KAR 9:005:

Name and Title	Organization/Agency/Other Entity
Sharon D. Perkins, Director of Health Policy	Kentucky Hospital Association
Kathy Adams, Director of Public Policy	Children's Alliance
Rebecca Randall, Director of Regulatory Affairs	WellCare
Kristi Hall, President	Kentucky Academy of Physician Assistants

(3) The following individual from the promulgating agency responded to comments received regarding 907 KAR 9:005:

Name and Title	Organization/Agency/Other Entity
Leslie Hoffmann, Director	Department for Medicaid Services, Division of Community Alternatives
Ann Hollen, Program Manager	Department for Medicaid Services, Division of Community Alternatives
Jonathan MacDonald, Policy Analyst	Department for Medicaid Services, Commissioner's Office
Stuart Owen, Regulation Coordinator	Department for Medicaid Services, Commissioner's Office

SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: Failure to return payment to DMS or MCO

(a) Comment: Sharon D. Perkins, Director of Health Policy, Kentucky Hospital Association, stated the following:

"Section 2 (7)(b) Failure to return a payment to the department or managed care organization in accordance with paragraph (a) of this section may be: 1. interpreted to be fraud or abuse: and… KHA strongly opposes this language and the language is not

consistent with prompt pay law 806 KAR 17:360, which the managed care organizations are to abide by. There are specified procedures to follow for allowing facilities to review payment and work with the department and managed care organization to determine over or underpayment."

(b) Response: The provision in the administrative regulation is not referring to disputes with an MCO and the word "may" rather than "shall" indicates not every scenario is a fraud or abuse scenario.

(2) Subject: Payment for service

(a) Comment: Sharon D. Perkins, Director of Health Policy, Kentucky Hospital Association, stated the following:

"Additionally, Section 2 (8) (a) when the department or managed care organization makes payment for a covered service and the Level I or Level II psychiatric residential treatment facility accepts the payment: 1. The payment shall be considered payment in full. The payment cannot be considered payment in full if there is incorrect information. Certainly, we understand that the patient would not be billed the remaining balance but this language is unclear to that effect."

(b) Response: DMS is revising the language as follows in an "amended after comments" administrative regulation.

"(8)(a) When the department or managed care organization makes payment for a covered service and the Level I or Level II psychiatric residential treatment facility accepts the payment:
1. The payment shall be considered payment in full;
2. A bill for the same service shall not be given to the recipient; and
3. Payment from the recipient for the same service shall not be accepted by the Level I or Level II psychiatric residential treatment facility.
(b)1. A Level I or Level II psychiatric residential treatment facility may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:
a. Recipient requests the service; and
b. Level I or Level II psychiatric residential treatment facility makes the recipient aware in advance of providing the service that the:
(i) Recipient is liable for the payment; and
(ii) Department or managed care organization if the recipient is enrolled with a managed care organization is not covering the service.
2. If a recipient makes payment for a service in accordance with subparagraph 1 of this paragraph, the:
a. Level I or Level II psychiatric residential treatment facility shall not bill the department or managed care organization, if applicable, for the service; and
b. Department or managed care organization, if applicable, shall not:
(i) Be liable for any part of the payment associated with the service; and
(ii) Make any payment to the Level I or Level II psychiatric residential treatment facility

regarding the service.
(c) Except as established in paragraph (b) or except for a cost sharing obligation owed by a recipient, a provider shall not bill a recipient for any part of a service provided to the recipient."

(3) Subject: Treatment plan and plan of care

(a) Comment: Kathy Adams, Director of Public Policy, Children's Alliance, stated the following:

"Page 10, line 16, The OIG PRTF Licensure reg (902 KAR 20:320) does not define "treatment plan" and instead uses the phrase "plan of care", but does not define this phrase. Clearly the definition of "treatment plan" included in this regulation is very extensive, however, it is confusing that OIG and DMS are using two different phrases to refer to a common document. So it seems when OIG surveys a PRTF they are reviewing a "plan of care" and a DMS audit would review a "treatment plan", yet for Medicaid clients, the "plan of care" and "treatment plan" are the same document(s). Recommend that the same phrase be used by OIG and DMS."

(b) Response: Indeed the terms are different between the two (2) agencies; however, DMS uses the term "plan of care" in other related administrative regulations and Legislative Research Commission staff, when reviewing DMS administrative regulations, compares terminology among other DMS administrative regulations to check for consistency. DMS prefers to keep the term as is in order to ensure consistency with related DMS administrative regulations.

(4) Subject: DSM codes

(a) Comment: Rebecca Randall, Director of Regulatory Affairs, WellCare, stated the following:

"WellCare suggests that the Diagnostic and Statistical Manual of Mental Disorders (DSM) IV-R Axis codes, which are throughout the document, be updated to the current version of the DSM."

(b) Response: DMS appreciates the recommendation to update the codes; however, the criteria established in the administrative regulation (which is based on DMS IV) resulted from a lengthy process involving external stakeholders and clinical staff from the Cabinet for Health and Family Services and DMS does not wish to alter the criteria without input from all affected parties.

(5) Subject: Physician Assistants

(a) Comment: Kristi Hall, President, Kentucky Academy of Physician Assistants

"In 907 KAR 9:005, PAs are not included under the definition of a "behavioral health

professional” in a non-outpatient level I and II psychiatric residential treatment facility. However, other categories that encapsulate primary care providers, such as APRNs and physicians, are included.”

(b) Response: Via an “amended after comments” administrative regulation DMS is revising the definition of “behavioral health professional under clinical supervision” to include physician assistants.

DMS does not oppose autonomy for physician assistants; however, the corresponding document approved by the Centers for Medicare and Medicaid Services (state plan) only authorizes federal funding for services rendered by physician assistants under supervision. Until federal approval and funding is secured for behavioral health services rendered by independently practicing physician assistants, DMS is not incorporating that particular change in this administrative regulation.

SUMMARY OF STATEMENT OF CONSIDERATION
AND
ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY

The Department for Medicaid Services (DMS) has considered the comments received regarding 907 KAR 9:005 and is amending the administrative regulation as follows:

Page 3
Section 1(5)(f)
Line 18
After “associate”, delete “or”.

Page 3
Section 1(5)(g)
Line 19
After “(g)”, insert the following:
“Physician assistant; or
(h)”

Page 20
Section (9)(a)
Line 12
Before “(9)(a)”, insert the following:
(c) Except as established in paragraph (b) of this subsection or except for a cost sharing obligation owed by a recipient, a provider shall not bill a recipient for any part of a service provided to the recipient.